



STATE OF DELAWARE

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## **MEMORANDUM**

**TO:** The Chair and Commissioners

**FROM:** Lisa B. Driggins, Public Utilities Analyst

Handwritten initials "LBD" in a circle.

**DATE:** April 11, 2017

**SUBJECT:** IN THE MATTER OF THE APPLICATION OF ARTESIAN WATER COMPANY, INC. FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE WATER SERVICES PURSUANT TO 26 DEL. C. §203C ("NCC030717") (FILED MARCH 31, 2017)  
**PSC DOCKET NO. 17-0165**

On March 31, 2017, Artesian Water Company, Inc. ("Artesian" or the "Company") submitted an application ("Application") with the Delaware Public Service Commission (the "Commission") seeking a Certificate of Public Convenience and Necessity ("CPCN") to provide water services to twenty-two parcels at the Fort DuPont Complex in New Castle County, Delaware, known as NCC0030717 (the "Proposed Service Area") pursuant to 26 *Del. C.* §203C(e)(1)b.2.

As required by 26 *Del. C.* §203C(e)(1)b.2. and the Commission's Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities, 26 *Del. Admin. C.* §2002 (the "Regulations"), the submitted Application contained the following documentation: (1) a copy of a petition signed by all of the landowners of record included in the Proposed Service Area requesting to be included in the Proposed Service Area; (2) a copy of the United States Postal Service forms verifying that the Company sent, via certified mail, a Commission approved notice to all landowners of record of each parcel included in the Proposed Service Area; (3) a list of the County tax map parcel identification numbers of the properties and identification of all landowners of record included in the Proposed Service Area;<sup>1</sup> and (4) a copy of the associated tax map clearly marking the Proposed Service Area. Additionally, the Application contained Artesian's statement that its expansion of service to the Proposed Service Area will comply with the water pressure requirements of 26 *Del. C.*

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<sup>1</sup>At Staff's request, Artesian submitted a written certification that the Company (i) reviewed the appropriate tax or land record documents relating to the Proposed Service Area; (ii) confirmed that the landowner identified in the parcel listing are the landowners of record; and (iii) confirmed that the petitions included in the Application have been signed by each landowner of record.

§§403(a) and (b) and that Artesian is not barred by any of the restrictions set forth in 26 *Del. C.* §403(c).

In addition to the required notification to all the landowners of record in the Proposed Service Area, Artesian published a notice in The News Journal and the Delaware State News newspaper on April 5, 2017. The notice advised residents of the Application, that the Application may be reviewed at the Commission's office during normal business hours or on the Commission's website, that a hearing on this matter would not be held unless an appropriate request for a hearing was received, and that the property owner may object to or "opt-out" of the Proposed Service Area. To date, no comments regarding the Company or this Application have been received, and no landowners of record included in the Proposed Service Area have objected to the Application or elected to "opt-out" of the Proposed Service Area.

On February 23, 2017, Artesian and the Fort DuPont Redevelopment & Preservation Corporation ("FDRPC") entered into an Agreement for purchase of existing water assets at Fort DuPont and for the provisions of potable water and fire suppression services ("Agreement"). The closing of the transactions must occur within 90 days or the Agreement is null and void. For Artesian and FDRPC to close within the required timeframe of the Agreement, Artesian's Application will require expedited treatment.

On March 31, 2017, the Company requested a waiver of the timing requirement prescribed in 26 *Del. Admin. C.* §2002-9.2<sup>2</sup> and 11.1<sup>3</sup>. As a "good cause," the Company submits granting the requested waiver would be in the public interest because the timing requirement is an administrative rather than a statutory requirement and Artesian had provided all necessary information about the parcels. Additionally, Artesian believes that granting the waiver should not be unduly disruptive for customers and would provide for an administratively efficient use of resources. Lastly, Artesian believes that extending water service to the parcels listed in the Application would not harm or degrade its ability to provide safe, reliable water service for its present customers. Staff believes that the reasons given as "good cause" justify a waiver, therefore Staff recommends that the Commission grant the requested waiver of the timing requirement as set forth in Section 9.2 of the Regulations.

Staff reviewed the Application to ensure compliance with the statutory provisions of 26 *Del. C.* §203C and the Regulations. No errors or omissions were found. Finally, to determine whether the Commission should deny the requested CPCN as set forth in 26 *Del. C.* §203C(f), Staff solicited comments from the Delaware Department of Natural Resources and Environmental Control, the Office of the State Fire Marshal, and the Office of Drinking Water of the Division of Public Health. All three agencies responded and confirmed they have no issues relating to Artesian's ability to provide safe, adequate, and reliable water services to its existing customers.

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<sup>2</sup> Under 26 *Del. Admin. C.* §2002-9.2, the form of notice required by these regulations shall be sent to each landowner of record not more than thirty-five days and not less than thirty days prior to the filing of the Application.

<sup>3</sup> Under 26 *Del. Admin. C.* §2002-11.1, A landowner of record of a parcel that is, in whole or part within a Proposed Service Area may object to a CPCN being granted by filing with the Commission a signed written document reflecting such objection. The objection shall set forth the reasons why the applicant is not entitled to a Certificate. Except for good cause, the written objection shall be filed with the Commission no later than seventy-five (75) days after the landowner received the notice required under Sections 9.1 and 10.1.

In summary, Staff recommends that the Commission grant Artesian's requested waiver of the regulatory timing requirements. Staff also finds no reason to deny the Company a CPCN under the provisions of 26 *Del. C.* §203C(f). Therefore, Staff recommends that the Commission grant the Company a CPCN based on the Application.